A

MALAYSIA INTERNATIONAL CONSULTANTS SDN BHD

v.

B

RR CHELLIAH BROTHERS

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
HELILIAH MOHD YUSOF JCA
SULONG MATJERAIE JCA
C [CIVIL APPEAL NO: W-02-206-2004]
4 FEBRUARY 2009

CIVIL PROCEDURE: *Costs - Getting up - Taxation - Review of quantum awarded by taxing registrar - Whether warranted*

D

CIVIL PROCEDURE: *Costs - Taxation - Getting up - Review of quantum awarded by taxing registrar - Whether warranted*

LEGAL PROFESSION: *Remuneration - Taxation of costs - Getting up - Review of quantum awarded by taxing registrar - Whether warranted*

E

In this appeal, the only issue was whether a judge upon a review of taxation was entitled to interfere with the quantum awarded by a taxing registrar in respect of getting up on a solicitor-client bill. The taxing registrar in this case had awarded a mere RM10,000 and the solicitors (who claimed RM140,000), being dissatisfied with that award, applied for review by the judge, who subsequently enhanced the award to RM140,000. The appellant submitted that the judge erred in making the award that he did, and that he had taken into account irrelevant considerations and extraneous factors in reaching his decision.

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G

Held (dismissing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

H

(1) In her certificate the registrar, after setting out a brief statement of the facts, rejected the claim for RM140,000 on the ground that it had not been justified before her. Having considered the material that was before the registrar, it was clear that she did in fact commit a serious error in point of principle. For, when she was seeking justification from the solicitors for the claim of getting up in the case, she obviously

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overlooked the nature the claim, its seriousness, the importance of litigation to the client and the nature and extent of the work that must have been done in preparing the kind of defence that was made available to her. In short, she asked herself the wrong question; she failed to have regard to the material before her and looked for justification when it was there before her. Accordingly, the review judge was entitled to intervene in this case. He was entirely within the limits prescribed by the principles of law governing his function upon the review. There was also no substantial basis to the complaint that the judge had taken into account extraneous considerations. Any error was *de minimis* at best. For the reasons given, the appeal was devoid of merit. (paras 6 & 7)

Bahasa Malaysia *Translation Of Headnotes*

Dalam rayuan ini, isu tunggal ialah sama ada seorang hakim atas kajian semula penetapan berhak mencampurtangan dengan kuantum yang diawardkan oleh seorang pendaftar penetapan berhubungan dengan penyediaan sesuatu bil peguamcara-klien. Pendaftar penetapan dalam kes ini telah mengaward RM10,000 sahaja dan peguamcara itu (yang menuntut RM140,000), berasa tidak puas hati dengan award itu, telah memohon untuk kajian semula oleh hakim, yang selepas itu telah menambahkan award kepada RM140,000. Perayu menghujah bahawa hakim telah khilaf dalam membuat award yang beliau buat, dan bahawa beliau telah mengambil dalam perhitungan pertimbangan-pertimbangan dan faktor-faktor yang tidak berkaitan dalam mencapaikan keputusannya.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Dalam sijilnya pendaftar, selepas menghuraikan suatu pernyataan fakta-fakta yang ringkas, menolak tuntutan untuk RM140,000 itu atas alasan bahawa ia tidak dijustifikasi kepadanya. Setelah mempertimbangkan material yang telah dibawa ke hadapan pendaftar, ia adalah jelas bahawa beliau telah sebenarnya melakukan sesuatu kekhilafan yang serius atas perkara mengenai prinsip. Sebabnya, apabila beliau meminta justifikasi daripada peguamcara untuk tuntutan penyediaan dalam kes itu, beliau jelasnya tidak mengendahkan sifat tuntutan itu, keseriusannya, kepentingan litigasi kepada klien dan sifat dan tahap kerja yang mesti telahpun dibuat dalam

menyediakan pembelaan sebegitu yang ada untuknya. Secara ringkasnya, beliau tanya dirinya sendiri soalan yang salah; beliau gagal untuk memerhatikan material di depannya dan telah mencari justifikasi apabila ia ada di depannya. Oleh yang demikian, hakim kajian semula itu berhak mencampurtangan dalam kes ini. Beliau ternyata termasuk dalam had-had yang diperuntukkan oleh prinsip-prinsip undang-undang yang menguasai fungsinya atas kajian semula itu. Tidak terdapat juga apa-apa asas yang substantif berkenaan dengan aduan bahawa hakim telah mengambil dalam perhitungan pertimbangan-pertimbangan yang tidak berkaitan. Paling pun, apa-apa kekhilafan ialah *de minimis*. Bagi sebab-sebab yang diberi, rayuan ini langsung tidak bermerit.

Case(s) referred to:

Gooi Hock Seng v. Chuah Guat Khim [2001] 1 CLJ 583 SC ***(refd)***
MC Corbett v. Ipoh Dredging [1936] MLJ (Rep) 222 ***(refd)***

For the appellant - Maidzuara Mohammed; M/s Logan Sabapathy & Co
For the respondent - Dato' V Sivaparanjothi; M/s RR Chelliah Brothers

[Appeal from High Court, Kuala Lumpur; Originating Petition No: R3-17-4-1999]

Reported by Suresh Nathan

JUDGMENT

Gopal Sri Ram JCA:

[1] This is the judgment of the court.

[2] The only issue in this appeal is whether a judge upon review of taxation is entitled to interfere with the quantum awarded by a taxing registrar in respect of getting up on a solicitor-client bill. The facts out of which this issue arises fall within a narrow compass. The appellant before us was the 2nd defendant in a suit brought by Negara Properties Sdn Bhd claiming, *inter alia*, a sum of RM6 million as damages for negligent work carried out by the appellant. The 2nd defendant was engaged by Negara Properties as a consultant infrastructural engineer. Its duty was to provide services for the construction of earthwork, road, drainage and sewerage system for the development of the project called Taman Melawati. It is arising from that engagement that the charge of negligence

arose. The appellant engaged the services of Mr. R.R. Chelliah a doyen of the Bar and counsel whose reputation preceded him. He prepared a defence for the appellant. If you look at it, you will see in what detail it met the charges made against the appellant. It is a specialist defence in the sense that it deals with matters relating to drainage system and the like at length, condescending into specifics. It is beyond peradventure that a great deal of work must have gone into its preparation. It is common ground between the parties before us that at some stage Mr. Chelliah's firm was discharged and new solicitors appointed. A dispute arose between the parties as to the fee payable for the work done. Accordingly a petition of course under the Legal Profession Act 1976 was presented and an order obtained for taxation of the solicitors bill. A bill was duly presented and was taxed. For work done under the item of getting up the solicitors made a claim of RM140,000. The taxing registrar awarded a mere RM10,000. Dissatisfied with that award, the solicitors applied for review by the judge. He enhanced the taxing registrar's award to RM140,000.

[3] Before us, the appellant has argued that the learned judge was in error in making the award which he did. We were referred to the function of a review judge as stated by Aitken J in *M.C. Corbett v. Ipoh Dredging* [1936] MLJ (Rep) 222. The following passage in the judgment in that case was read to us:

> Only so much should be allowed as would be regarded by a competent local practitioner as an adequate reward for his services as an advocate in the particular case under consideration. Opinions on such a point may differ, but it the opinion of the Registrar (or Assistant Registrar) that the law provides shall count unless, as I have said before, he can be shown to have made some obvious error, or to have exercised his in that regard capriciously or mischievously, or simply to have followed someone else's advice or instructions and not to have exercised any discretion at all.

[4] It was submitted that the registrar in the present instance had committed none of the errors adverted to by Aitken J entitling the learned judge to intervene by way of review. Reference was also made to the judgment of Abdul Malek Ahmad FCJ in *Gooi Hock Seng v. Chuah Guat Khim* [2001] 1 CLJ 583 where at p. 587 there appears the following passage:

In *Coon v. Diamond Tread Co.* [1938] Ltd [1950] 2 All ER 385, on an inquiry as to damages, an official referee awarded the plaintiff a sum of £10,541, together with costs which he directed should be taxed. A bill of costs brought in by the plaintiff was reduced by the taxing master in respect of sums included in the bill in respect of the items 'instructions for brief,' fees and refreshers to leading and junior counsel, and fees of accountants whose services the plaintiff had used at the inquiry. The plaintiff objected to the reductions on the grounds that the fees allowed were inadequate, and asked for the decision of the taxing master to be reviewed.

It was held that as the complaint went to quantum only, it had not been shown that the taxing master had erred on a question of principle and therefore the court had no jurisdiction to interfere with his decision.

[5] Complaint was also made before us that the learned judge had taken into account irrelevant consideration and extraneous factors when arriving at his decision. Mention was made of the fact that the learned judge had, in his judgment, dealt with the fact that there had been negotiations for settlement when that fact was not evidentially before him.

[6] We are conscious that we would be entitled to interfere in this case once we are satisfied that the review judge had exceeded the role assigned to him by law. In other words, appellate interference would be warranted if it can be shown that the judge had amended the registrar's allocatur or certificate in the absence of any error or principle on the part of the latter. In her certificate the learned registrar after setting out a brief statement of the facts rejects the claim for RM140,000 on the ground that it had not been justified before her. Having considered the material that was before the registrar which has been made available to us in the record provided by the appellant, we are satisfied that the learned registrar did in fact commit a serious error in point of principle. For, when she was seeking justification from the solicitors (respondents before us) for the claim for getting up the case, she obviously overlooked the nature of the claim, its seriousness, the importance of litigation to the client and the nature and extent of the work that must have been done in preparing the kind of defence that was made available to her. There you have the justification staring one in the face. In short, she asked herself the wrong question; failed to have regard to the material before her

and looked for justification when it was there before her. Accordingly this is the case in which the learned review judge was entitled to intervene. He was entirely, in our opinion, within the limits prescribed by the principles of law governing his function upon the review.

[7] As for the complaint that the learned judge had taken into account extraneous considerations, we have carefully examined the material placed before the registrar and before the judge and we find no substantial basis for this. Any error was *de minimis* at best.

[8] For the reasons already given, we are of the view that this appeal is devoid of merit. It is dismissed. The appellant must pay the respondent their costs of this appeal. The deposit shall be paid out to the respondent solicitors to account of their taxed costs.